

**ASSEMBLY BILL**

**No. 2665**

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**Introduced by Assembly Member Ackerman**

**(Coauthors: Assembly Members Ashburn, Bates, Battin,  
Campbell, Cox, Dickerson, Florez, Leach, and Robert  
Pacheco)**

**(Coauthor: Senator Morrow)**

February 25, 2000

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An act to amend Section 11105.3 of the Penal Code, and Section 15660 of the Welfare and Institutions Code, relating to crime prevention.

LEGISLATIVE COUNSEL'S DIGEST

AB 2665, as introduced, Ackerman. Crime prevention: criminal record reporting.

(1) Existing law authorizes a human resource agency or an employer to request from the Department of Justice records of all convictions or any arrest for which the person is released on bail or on his or her own recognizance pending trial, involving any sex crimes, drug crimes, or crimes of violence, as defined. Existing law requires the department to furnish records to a requester if, among other things, the subject of the request has a total of 3 or more felony or misdemeanor convictions within the immediately preceding 10-year period or if the subject has a felony or misdemeanor conviction within 10 years of the employer's request, as specified, for any of a number of specified violations, provided that the subject of the request has a total of 3 or more felony or misdemeanor convictions within the immediate preceding 10-year period.

This bill would also require that records be furnished if the subject of the request for criminal records has been incarcerated for any of the convictions within the 10-year period following the convictions or, in the case of a felony conviction that is over 10 years old, if the subject was incarcerated within 10 years of the employer's request.

(2) Existing law requires the Department of Justice to secure any criminal record of a person to determine whether the person has been convicted within the last 10 years of a sex offense against a minor or of a violation of other specified crimes, including any felony, if, for purposes of the In-Home Supportive Services program, an employer of the person requests the determination and submits fingerprints of the person to the department. Likewise, under existing law, if it is found that the person has been convicted within the last 10 years of these offenses, the department is required to notify the employer of that fact or provide a statement of the fact that no criminal record is found.

This bill would additionally require that the department secure a criminal record or notify the employer if the person was incarcerated within the last 10 years for these offenses.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11105.3 of the Penal Code is  
2 amended to read:  
3 11105.3. (a) Notwithstanding any other law, a human  
4 resource agency or an employer may request from the  
5 Department of Justice records of all convictions or any  
6 arrest pending adjudication involving the offenses  
7 specified in subdivision (h) of a person who applies for a  
8 license, employment, or volunteer position, in which he  
9 or she would have supervisory or disciplinary power over  
10 a minor or any person under his or her care. The  
11 department shall furnish the information to the  
12 requesting employer and shall also send a copy of the  
13 information to the applicant.



1 (b) Any request for records under subdivision (a) shall  
2 include the applicant's fingerprints, which may be taken  
3 by the requester, and any other data specified by the  
4 department. The request shall be on a form approved by  
5 the department, and the department may charge a fee to  
6 be paid by the employer, human resource agency, or  
7 applicant for the actual cost of processing the request.  
8 However, no fee shall be charged a nonprofit  
9 organization. The department shall destroy an  
10 application within six months after the requested  
11 information is sent to the employer and applicant.

12 (c) (1) Where a request pursuant to this section  
13 reveals that a prospective employee or volunteer has  
14 been convicted of an offense specified in paragraph (1)  
15 of subdivision (h), and where the agency or employer  
16 hires the prospective employee or volunteer, the agency  
17 or employer shall notify the parents or guardians of any  
18 minor who will be supervised or disciplined by the  
19 employee or volunteer. The notice shall be given to the  
20 parents or guardians with whom the child resides, and  
21 shall be given at least 10 days prior to the day that the  
22 employee or volunteer begins his or her duties or tasks.  
23 Notwithstanding any other provision of law, any person  
24 who conveys or receives information in good faith  
25 conformity with this section is exempt from prosecution  
26 under Section 11142 or 11143 for that conveying or  
27 receiving of information. Notwithstanding subdivision  
28 (d), the notification requirements of this subdivision shall  
29 apply as an additional requirement of any other provision  
30 of law requiring criminal record access or dissemination  
31 of criminal history information.

32 (2) The notification requirement pursuant to  
33 paragraph (1) shall not apply to a misdemeanor  
34 conviction for violating Section 261.5 or to a conviction for  
35 violating Section 262 or 273.5. Nothing in this paragraph  
36 shall preclude an employer from requesting records of  
37 convictions for violating Section 261.5, 262, or 273.5 from  
38 the Department of Justice pursuant to this section.

39 (d) Nothing in this section supersedes any law  
40 requiring criminal record access or dissemination of

1 criminal history information. In any conflict with another  
2 statute, dissemination of criminal history information  
3 shall be pursuant to the mandatory statute. This  
4 subdivision applies to, but is not limited to, requirements  
5 pursuant to Article 1 (commencing with Section 1500) of  
6 Chapter 3 of, and Chapter 3.2 (commencing with Section  
7 1569) and Chapter 3.4 (commencing with Section  
8 1596.70) of, Division 2 of, and Section 1522 of, the Health  
9 and Safety Code, and Sections 8712, 8811, and 8908 of the  
10 Family Code.

11 (e) The department may adopt regulations to  
12 implement the provisions of this section as necessary.

13 (f) As used in this section, “employer” means any  
14 nonprofit corporation or other organizations specified by  
15 the Attorney General which employs or uses the services  
16 of volunteers in positions in which the volunteer or  
17 employee has supervisory or disciplinary power over a  
18 child or children.

19 (g) As used in this section, “human resource agency”  
20 means a public or private entity, excluding any agency  
21 responsible for licensing of facilities pursuant to the  
22 California Community Care Facilities Act (Chapter 3  
23 (commencing with Section 1500)), the California  
24 Residential Care Facilities for the Elderly Act (Chapter  
25 3.2 (commencing with Section 1569)), Chapter 3.01  
26 (commencing with Section 1568.01), and the California  
27 Child Day Care Facilities Act (Chapter 3.4 (commencing  
28 with Section 1596.70)) of Division 2 of the Health and  
29 Safety Code, responsible for determining the character  
30 and fitness of a person who is (1) applying for a license,  
31 employment, or as a volunteer within the human services  
32 field that involves the care and security of children, the  
33 elderly, the handicapped, or the mentally impaired, or  
34 (2) applying to adopt a child or to be a foster parent.

35 (h) Records of the following offenses shall be  
36 furnished as provided in subdivision (a):

37 (1) Violations or attempted violations of Section 220,  
38 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in  
39 Section 290, except for the offense specified in subdivision  
40 (d) of Section 243.4.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period *or has been incarcerated as a result of any of those convictions within the preceding 10 years.*

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a) *or any felony conviction that is over 10 years old if the subject of the request was incarcerated within 10 years of the employer's request*, for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period *or has been incarcerated for any of those convictions within the preceding 10 years.*

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(i) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

1 SEC. 2. Section 15660 of the Welfare and Institutions  
2 Code is amended to read:

3 15660. (a) The Department of Justice shall secure  
4 any criminal record of a person to determine whether the  
5 person has been convicted *or incarcerated* within the last  
6 10 years *as the result of committing* a sex offense against  
7 a minor, a violation of Section 243.4, 273a, 273d, or  
8 subdivision (a) or (b) of Section 368, of the Penal Code,  
9 theft, robbery, burglary, or any felony, if both of the  
10 following conditions are met:

11 (1) An employer of the person requests the  
12 determination and submits fingerprints of the person to  
13 the Department of Justice. For purposes of this  
14 paragraph, “employer” includes, but is not limited to, an  
15 in-home supportive services recipient, as defined by  
16 Section 12302.2 and any recipient of personal care  
17 services under the Medi-Cal program pursuant to Section  
18 14132.95.

19 (2) The person is unlicensed and provides nonmedical  
20 domestic or personal care to an aged or disabled adult in  
21 the adult’s own home.

22 (b) (1) If it is found that the person has been  
23 convicted *or incarcerated* within the last 10 years *as the*  
24 *result of committing* a sex offense against a minor, a  
25 violation of Section 243.4, 273a, 273d, or subdivision (a) or  
26 (b) of Section 368, of the Penal Code, theft, robbery,  
27 burglary, or any felony, the Department of Justice shall  
28 notify the employer of that fact. If no criminal record  
29 information has been recorded, the Department of  
30 Justice shall provide the employer with a statement of  
31 that fact.

32 (2) Any employer may deny employment to any  
33 person who is the subject of a report under paragraph (1)  
34 when the report indicates that the person has committed  
35 any of the crimes identified in paragraph (1).

36 (3) Nothing in this section shall be construed to  
37 require any employer to hire any person who is the  
38 subject of a report under paragraph (1) when the report  
39 indicates that the person has not committed any of the  
40 crimes indicated in paragraph (1).

1 (c) (1) Fingerprints shall be on a card provided by the  
2 Department of Justice for the purpose of obtaining a set  
3 of fingerprints. The employer shall submit the  
4 fingerprints to the Department of Justice. Within 30  
5 calendar days of the receipt of the fingerprints, the  
6 Department of Justice shall notify the employer of the  
7 criminal record information, as provided in this  
8 subdivision. If no criminal record information has been  
9 recorded, the Department of Justice shall provide the  
10 employer with a statement of that fact as soon as possible,  
11 but not later than 30 calendar days of receipt of the  
12 fingerprints. If new fingerprints are required for  
13 processing, the Department of Justice shall, as soon as  
14 possible, but not later than 30 calendar days from the date  
15 of receipt of the fingerprints, notify the employer that the  
16 fingerprints were illegible.

17 (2) Fingerprints may be taken by any local law  
18 enforcement officer or agency for purposes of paragraph  
19 (1).

20 (3) Counties shall notify any recipient of, or applicant  
21 for, in-home supportive services or personal care services  
22 under the Medi-Cal program, upon his or her application  
23 for in-home supportive services or personal care services  
24 or during his or her annual redetermination, or upon the  
25 recipient's changing providers, that a criminal record  
26 check is available, and that the check can be performed  
27 by the Department of Justice.

28 (d) The Department of Justice shall charge a fee to the  
29 employer to cover the costs of administering this section.

30 (e) It is the intent of the Legislature that the  
31 Department of Justice charge a fee to cover its cost in  
32 providing services in accordance with this section to  
33 comply with the 30 calendar day requirement for  
34 provision to the department of the criminal record  
35 information, as contained in subdivision (c).